

TITLE 179 PUBLIC WATER SYSTEMS

CHAPTER 6 VARIANCES AND EXEMPTIONS

6-001 SCOPE AND AUTHORITY: These regulations establish the requirements for variances from drinking water standards, including small systems variances. They also establish the requirements for exemptions from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of a drinking water standard. The statutory authority is found in Neb. Rev. Stat. §§ 71-5301 to 71-5313.

6-002 DEFINITIONS

Department means the Department of Health and Human Services Regulation and Licensure.

Director means the Director of Regulation and Licensure or his/her authorized representative.

6-003 CONDITIONS: The Director may grant variances or exemptions from certain provisions of the regulations under the Nebraska Safe Drinking Water Act, in compliance with 42 U.S.C. §300g-4 and 42 U.S.C. §300g-5 as published on January 1, 2001 and 40 CFR 142 Subpart K of the Code of Federal Regulations, as published on July 1, 2002. These documents are incorporated herein by reference and are available for viewing at the Department of Health and Human Services Regulation and Licensure, Public Health Assurance Division, 301 Centennial Mall South, Lincoln, NE 68509.

## **42 U.S.C. Section 300g-4 Variances**

01/02/01

(TITLE 42 - THE PUBLIC HEALTH AND WELFARE  
CHAPTER 6A - PUBLIC HEALTH SERVICE  
SUBCHAPTER XII - SAFETY OF PUBLIC WATER SYSTEMS  
Part B - Public Water Systems)

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)

(A)

A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the State that indicates that alternative sources of water are not reasonably available to the system. The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the the <sup>(1)</sup> time the variance is granted, a schedule for -

(i)

compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii)

implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B)

A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to

protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C)

Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D)

Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(E)

Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F)

Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall

(i)

provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and

(ii)

advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)

(i)

If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall -

(I)

identify each public water system with respect to which the finding was made,

(II)

specify the reasons for the finding, and

(III)

as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii)

The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall

(I)

rescind the finding for which the notice was given and promptly notify the State of such rescission, or

(II)

promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii)

If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2)

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3)

The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g-3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c)

Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which

leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g-1(b) of this title.

(e) Small system variances

(1) In general

A State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title (or the Administrator in nonprimacy States) may grant a variance under this subsection for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to -

(A)

public water systems serving 3,300 or fewer persons; and

(B)

with the approval of the Administrator pursuant to paragraph (9), public water systems serving more than 3,300 persons but fewer than 10,000 persons,

if the variance meets each requirement of this subsection.

(2) Availability of variances

A public water system may receive a variance pursuant to paragraph (1), if -

(A)

the Administrator has identified a variance technology under section 300g-1(b)(15) of this title that is applicable to the size and source water quality conditions of the public water system;

(B)

the public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

(C)

the State in which the system is located determines that the conditions of paragraph (3) are met.

(3) Conditions for granting variances

A variance under this subsection shall be available only to a system -

(A)

that cannot afford to comply, in accordance with affordability criteria established by the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title), with a national primary drinking water regulation, including compliance through -

(i)

treatment;

(ii)

alternative source of water supply; or

(iii)

restructuring or consolidation (unless the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) makes a written determination that restructuring or consolidation is not practicable); and

(B)

for which the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

(4) Compliance schedules

A variance granted under this subsection shall require compliance with the conditions of the variance not later than 3 years after the date on which the variance is granted, except that the Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) may allow up to 2 additional years to comply with a variance

technology, secure an alternative source of water, restructure or consolidate if the Administrator (or the State) determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to section 300j-12 of this title or any other Federal or State program.

(5) Duration of variances

The Administrator (or the State in the case of a State that has primary enforcement responsibility under section 300g-2 of this title) shall review each variance granted under this subsection not less often than every 5 years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

(6) Ineligibility for variances

A variance shall not be available under this subsection for -

(A)

any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

(B)

a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(7) Regulations and guidance

(A) In general

Not later than 2 years after August 6, 1996, and in consultation with the States, the Administrator shall promulgate regulations for variances to be granted under this subsection. The regulations shall, at a minimum, specify -

(i)

procedures to be used by the Administrator or a State to grant or deny variances, including requirements for notifying the Administrator and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

(ii)

requirements for the installation and proper operation of variance technology that is identified (pursuant to section 300g-1(b)(15) of this title) for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

(iii)

eligibility criteria for a variance for each national primary drinking water regulation, including requirements for the quality of the source water (pursuant to section 300g-1(b)(15)(A) of this title); and

(iv)

information requirements for variance applications.

(B) Affordability criteria

Not later than 18 months after August 6, 1996, the Administrator, in consultation with the States and the Rural Utilities Service of the Department of Agriculture, shall publish information to assist the States in developing affordability criteria. The affordability criteria shall be reviewed by the States not less often than every 5 years to determine if changes are needed to the criteria.

(8) Review by the Administrator

(A) In general

The Administrator shall periodically review the program of each State that has primary enforcement responsibility for public water systems under section 300g-2 of this title with respect to variances to determine whether the variances granted by the State comply with the requirements of this subsection. With respect to affordability, the determination of the Administrator shall be limited to whether the variances granted by the State comply with the affordability criteria developed by the State.

(B) Notice and publication

If the Administrator determines that variances granted by a State are not in compliance with affordability criteria developed by the State and the requirements of this subsection, the Administrator shall notify the State in writing of the deficiencies and make public the determination.

(9) Approval of variances

A State proposing to grant a variance under this subsection to a public water system serving more than 3,300 and fewer than 10,000 persons shall submit the variance to the Administrator for review and approval prior to the issuance of the variance. The Administrator shall approve the variance if it meets each of the requirements of this subsection. The Administrator shall approve or disapprove the variance within 90 days. If the Administrator disapproves a variance under this paragraph, the Administrator shall notify the State in writing of the reasons for disapproval and the variance may be resubmitted with modifications to address the objections stated by the Administrator.

(10) Objections to variances

(A) By the Administrator

The Administrator may review and object to any variance proposed to be granted by a State, if the objection is communicated to the State not later than 90 days after the State proposes to grant the variance. If the Administrator objects to the granting of a variance, the Administrator shall notify the State in writing of each basis for the objection and propose a modification to the variance to resolve the concerns of the Administrator. The State shall make the recommended modification or respond in writing to each objection. If the State issues the variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with this subsection.

(B) Petition by consumers

Not later than 30 days after a State exercising primary enforcement responsibility for public water systems under section 300g-2 of this title proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance. The Administrator shall respond to the petition and determine whether to object to the variance under subparagraph (A) not later than 60 days after the receipt of the petition.

(C) Timing

No variance shall be granted by a State until the later of the following:

(i)

90 days after the State proposes to grant a variance.

(ii)

If the Administrator objects to the variance, the date on which the State makes the recommended modifications or responds in writing to each objection

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Sec. 300g-5. - Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that -

(1)

due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 300j-12(d) of this title), the public water system is unable to comply with such contaminant level or

treatment technique requirement, or to implement measures to develop an alternative source of water supply,

(2)

the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system,

(3)

the granting of the exemption will not result in an unreasonable risk to health; <sup>[1]</sup> and

(4)

management or restructuring changes (or both) cannot reasonably be made that will result in compliance with this subchapter or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1)

If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for -

(A)

compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted, and

(B)

implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)

(A)

A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than 3 years after the otherwise applicable compliance date established in section 300g-1(b)(10) of this title.

(B)

No exemption shall be granted unless the public water system establishes that -

(i)

the system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to section 300g-1(b)(10) of this title;

(ii)

in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance or assistance pursuant to section 300j-12 of this title, or any other Federal or State program is reasonably likely to be available within the period of the exemption; or

(iii)

the system has entered into an enforceable agreement to become a part of a regional public water system; and the system is taking all practicable steps to meet the standard.

(C)

In the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods, but not to exceed



a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(D) Limitation. -

A public water system may not receive an exemption under this section if the system was granted a variance under section 300g-4(e) of this title.

(3)

Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g-3 of this title as if such requirement was part of a national primary drinking water regulation.

(4)

Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1)

Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall

(A)

provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and

(B)

advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)

(A)

If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall -

(i)

identify each exempt public water system with respect to which the finding was made,

(ii)

specify the reasons for the finding, and

(iii)

as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B)

The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall

(i)

rescind the finding for which the notice was given and promptly notify the State of such rescission, or

(ii)

promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C)

If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g-1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

have primary enforcement responsibility.

**§ 142.303 Which size public water systems can receive a small system variance?**

- (a) A State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems) may grant a small system variance to public water systems serving 3,300 or fewer persons.
- (b) With the approval of the Administrator pursuant to § 142.312, a State exercising primary enforcement responsibility for public water systems may grant a small system variance to public water systems serving more than 3,300 persons but fewer than 10,000 persons.
- (c) In determining the number of persons served by the public water system, the State or Administrator must include persons served by consecutive systems. A small system variance granted to a public water system would also apply to any consecutive system served by it.

**Subpart K—Variances for Small System**

SOURCE: 63 FR 43848, Aug. 14, 1998, unless otherwise noted.

GENERAL PROVISIONS

**§ 142.301 What is a small system variance?**

Section 1415(e) of the Act authorizes the issuance of variances from the requirement to comply with a maximum contaminant level or treatment technique to systems serving fewer than 10,000 persons. The purpose of this subpart is to provide the procedures and criteria for obtaining these variances. The regulations in this subpart shall take effect on September 14, 1998.

**§ 142.302 Who can issue a small system variance?**

A small system variance under this subpart may only be issued by either:

(a) A State that is exercising primary enforcement responsibility under Subpart B for public water systems under the State's jurisdiction; or

(b) The Administrator, for a public water system in a State which does not

**§ 142.304 For which of the regulatory requirements is a small system variance available?**

- (a) A small system variance is not available under this subpart for a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.
- (b) A small system variance under this subpart is otherwise only available for compliance with a requirement specifying a maximum contaminant level or treatment technique for a contaminant with respect to which;
- (1) a national primary drinking water regulation was promulgated on or after January 1, 1986; and
- (2) the Administrator has published a small system variance technology pursuant to Section 1412(b)(15) of the Act.
- NOTE TO PARAGRAPH (B)(1): Small system variances are not available for public water systems above the pre-1986 maximum contaminant level even if subsequently revised. If the Agency revises a pre-1986 maximum contaminant level and makes it more stringent, then a variance would be available for that contaminant, but only up to the pre-1986 maximum contaminant level.

**§ 142.305 When can a small system variance be granted by a State?**

No small system variance can be granted by a State until the later of the following:

- (a) 90 days after the State proposes to grant the small system variance;
- (b) If a State is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons and the Administrator objects to the small system variance, the date on which the State makes the recommended modifications or responds in writing to each objection; or
- (c) If a State is proposing to grant a small system variance to a public water system serving a population more than 3,300 and fewer than 10,000 persons, the date the Administrator approves the small system variance. The Administrator must approve or disapprove the variance within 90 days after it is submitted to the Administrator for review.

REVIEW OF SMALL SYSTEM VARIANCE  
APPLICATION

**§ 142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?**

- (a) A public water system requesting a small system variance must provide accurate and correct information to the State or the Administrator to issue a small system variance in accordance with this subpart. A State may assist a public water system in compiling information required for the State or the Administrator to issue a small system variance in accordance with this subpart.
- (b) Based upon an application for a small system variance and other information, and before a small system variance may be proposed under this subpart, the State or the Administrator must find and document the following:
  - (1) The public water system is eligible for a small system variance pursuant to §§ 142.303 (i.e., the system serves a population of fewer than 10,000 persons) and 142.304 (i.e., the contaminant for which the small system variance is

sought is not excluded from variance eligibility);

- (2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the State (or by the Administrator in States which do not have primary enforcement responsibility), with the national primary drinking water regulation for which a small system variance is sought, including by:

- (i) Treatment;
  - (ii) Alternative sources of water supply;
  - (iii) Restructuring or consolidation changes, including ownership change and/or physical consolidation with another public water system; or
  - (iv) Obtaining financial assistance pursuant to Section 1452 of the Act or any other Federal or State program;
- (3) The public water system meets the source water quality requirements for installing the small system variance technology developed pursuant to guidance published under section 1412(b)(15) of the Act;
- (4) The public water system is financially and technically capable of installing, operating and maintaining the applicable small system variance technology; and

- (5) The terms and conditions of the small system variance, as developed through compliance with § 142.307, ensure adequate protection of human health, considering the following:

- (i) The quality of the source water for the public water system; and
- (ii) Removal efficiencies and expected useful life of the small system variance technology.

**§ 142.307 What terms and conditions must be included in a small system variance?**

- (a) A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance.
- (b) The terms and conditions of a small system variance issued under this subpart must include, at a minimum, the following requirements:
  - (1) Proper and effective installation, operation and maintenance of the applicable small system variance technology in accordance with guidance

published by the Administrator pursuant to section 1412(b)(15) of the Act, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

(2) Monitoring requirements, for the contaminant for which a small system variance is sought, as specified in 40 CFR part 141; and

(3) Any other terms or conditions that are necessary to ensure adequate protection of public health, which may include:

(i) Public education requirements; and

(ii) Source water protection requirements.

(c) The State or the Administrator must establish a schedule for the public water system to comply with the terms and conditions of the small system variance which must include, at a minimum, the following requirements:

(1) Increments of progress, such as milestone dates for the public water system to apply for financial assistance and begin capital improvements;

(2) Quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance;

(3) Schedule for the State or the Administrator to review the small system variance under paragraph (d) of this section; and

(4) Compliance with the terms and conditions of the small system variance as soon as practicable but not later than 3 years after the date on which the small system variance is granted. The Administrator or State may allow up to 2 additional years if the Administrator or State determines that additional time is necessary for the public water system to:

(i) Complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

(ii) Obtain financial assistance provided pursuant to section 1452 of the Act or any other Federal or State program.

(d) The State or the Administrator must review each small system vari-

ance granted not less often than every 5 years after the compliance date established in the small system variance to determine whether the public water system continues to meet the eligibility criteria and remains eligible for the small system variance and is complying with the terms and conditions of the small system variance. If the public water system would no longer be eligible for a small system variance, the State or the Administrator must determine whether continuing the variance is in the public interest. If the State or the Administrator finds that continuing the variance is not in the public interest, the variance must be withdrawn.

#### PUBLIC PARTICIPATION

##### **§ 142.308 What public notice is required before a State or the Administrator proposes to issue a small system variance?**

(a) At least fifteen (15) days before the date of proposal, and at least thirty (30) days prior to a public meeting to discuss the proposed small system variance, the State, Administrator, or public water system as directed by the State or Administrator, must provide notice to all persons served by the public water system. For billed customers, identified in paragraph (a)(1) of this section, this notice must include the information listed in paragraph (c) of this section. For other persons regularly served by the system, identified in paragraph (a)(2) of this section, the notice shall include the information identified in paragraph (d) of this section. Notice must be provided to all persons served by:

(1) Direct mail or other home delivery to billed customers or other service connections, and

(2) Any other method reasonably calculated to notify, in a brief and concise manner, other persons regularly served by the system. Such methods may include publication in a local newspaper, posting in public places or delivery to community organizations.

(b) At the time of proposal, the State must publish a notice in the State equivalent to the FEDERAL REGISTER or a newspaper or newspapers of wide circulation in the State, or, in the case of the Administrator, in the FEDERAL

REGISTER. This notice shall include the information listed in paragraph (c) of this section.

(c) The notice in paragraphs (a)(1) and (b) of this section must include, at a minimum, the following:

- (1) Identification of the contaminant[s] for which a small system variance is sought;
  - (2) A brief statement of the health effects associated with the contaminant[s] for which a small system variance is sought using language in Appendix C of Part 141 Subpart O of this chapter;
  - (3) The address and telephone number at which interested persons may obtain further information concerning the contaminant and the small system variance;
  - (4) A brief summary, in easily understandable terms, of the terms and conditions of the small system variance;
  - (5) A description of the consumer petition process under § 142.310 and information on contacting the EPA Regional Office;
  - (6) a brief statement announcing the public meeting required under § 142.309(a), including a statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number at which interested persons may obtain further information concerning the meeting; and
  - (7) In communities with a large proportion of non-English-speaking residents, as determined by the primacy agency, information in the appropriate language regarding the content and importance of the notice.
- (d) The notice in paragraph (a)(2) of this section must provide sufficient information to alert readers to the proposed variance and direct them where to receive additional information.
- (e) At its option, the State or the Administrator may choose to issue separate notices or additional notices related to the proposed small system variance, provided that the requirements in paragraphs (a) through (d) of this section are satisfied.
- (f) Prior to promulgating the final variance, the State or the Administrator must respond in writing to all significant public comments received

relating to the small system variance. Response to public comment and any other documentation supporting the issuance of a variance must be made available to the public after final promulgation.

**§ 142.309 What are the public meeting requirements associated with the proposal of a small system variance?**

- (a) A State or the Administrator must provide for at least one (1) public meeting on the small system variance no later than 15 days after the small system variance is proposed.
- (b) At the time of the public meeting, the State or Administrator must prepare and make publicly available, in addition to the information listed in § 142.308(c), either:
- (1) The proposed small system variance, if the public meeting occurs after proposal of the small system variance;
  - or
  - (2) A draft of the proposed small system variance, if the public meeting occurs prior to proposal of the proposed small system variance.
- (c) Notice of the public meeting must be provided in the manner required under § 142.308 at least 30 days in advance of the public meeting. This notice must be provided by the State, the Administrator, or the public water system as directed by the State or Administrator.

**§ 142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?**

- (a) Any person served by the public water system may petition the Administrator to object to the granting of a small system variance within 30 days after a State proposes to grant a small system variance for a public water system.
- (b) The Administrator must respond to a petition filed by any person served by the public water system and determine whether to object to the small system variance under § 142.311, no later than 60 days after the receipt of the petition.

EPA REVIEW AND APPROVAL OF SMALL  
SYSTEM VARIANCES**§ 142.311 What procedures allow the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?**

- (a) At the time a State proposes to grant a small system variance under this subpart, the State must submit to the Administrator the proposed small system variance and all supporting information, including any written public comments received prior to proposal.
- (b) The Administrator may review and object to any proposed small system variance within 90 days of receipt of the proposed small system variance. The Administrator must notify the State in writing of each basis for the objection and propose a modification to the small system variance to resolve the concerns of the Administrator. The State must make the recommended modification, respond in writing to each objection, or withdraw the proposal to grant the small system variance.
- (c) If the State issues the small system variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act or this rule.

**§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?**

- (a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.
- (b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and

supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this rule.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

**§ 142.313 How will the Administrator review a State's program under this subpart?**

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of the Act, this rule and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this rule or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.